

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

GRISPO

Serial No.: 10/780,269

Filed: FEBRUARY 17, 2004

For: "INJECTOR AUTO PURGE"

Confirmation No. 2232

Art Unit: 3767

Examiner: GILBERT, ANDREW

Atty Docket No. 50319-00139

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR § 41.41

Appellant is submitting this Reply Brief to address the Examiner's Answer dated June 7, 2011.

This Reply Brief includes the headings that are set forth in MPEP §1208. Although Appellant does not believe that any fees are due in relation to the submission of this Reply Brief, please charge any such fees to Deposit Account No. 50-1419.

I. STATUS OF CLAIMS

Claims 57, 58, and 68-80 are pending in the application. Claims 1-56 and 59-67 have been canceled. The rejection of claims 57, 58, and 68-80 is the subject of this appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1) Whether claims 57, 58, and 68-80 are unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 6,471,674 to Emig et al. ("Emig") in view of Medrad, Inc., "Stellant CT Injection System", Operation Manual Catalog #SOM 700 EN, 2003, 88 pages ("Stellant OMC").

III. ARGUMENTS

In the Final Office Action, claims 57, 58, and 68-80 were rejected under 35 U.S.C. §103(a) as being unpatentable over Emig in view of Stellant OMC. The Examiner's Answer maintains the rejection of claims 57, 58, and 68-80 under 35 U.S.C. §103(a) as being unpatentable over Emig in view of Stellant OMC.

The focus of the Examiner's Answer appears to be directed to asserting and attempting to support a position that Emig only discloses two options for a purging operation, and based upon this asserted position, the Examiner continues to conclude that the appealed claims are obvious.

Initially, the Examiner cites two paragraphs from Emig on page 8 of the Examiner's Answer. The first cited paragraph (starting at column 6, line 6 of Emig) is directed to what is characterized as a priming operation. However, the second cited paragraph (starting at column 6, line 19 of Emig) is not directed to any kind of priming operation. In the paragraph starting at column 6, line 19 of Emig, the tubing is clearly connected to the patient, and a purging operation (e.g., to remove air from tubing) would not be conducted while the tubing is connected to the patient due to the adverse health consequences of injecting air into the patient's bloodstream.

On page 9 of the Examiner's Answer, the Examiner takes the position that at column 6, lines 6-26, Emig discloses purging air from the fluid lines by a saline push and a contrast push, and then notes that Emig is silent as to the order of the steps. The Examiner then concludes that the explicit teachings of Emig require either one of two choices: 1) a saline push followed by a contrast push; or 2) a contrast push followed by a saline push. Appellant disagrees in relation to the appealed claims.

Column 6, lines 6-8 of Emig notes that "forward motion of the plunger 520 causes saline to flow through the fluid path, including tubing 430 and patient interface 200 . . ." Column 6, lines 12-15 of Emig notes that "plunger 320 of contrast syringe is also preferably advanced sufficiently to prime the fluid path

between syringe 300 and check valve 410." However, Emig does not indicate that this is the result of a single movement of the plunger 520 (associated with the saline) and/or a single movement of the plunger 320 (associated with contrast). Nor does it address any ordering as acknowledged by the Examiner (page 9 of the Examiner's Answer). The plunger 520 (associated with saline) could be advanced and stopped a number of times to prime the noted section of the fluid path in Emig. The plunger 320 (associated with contrast) could be advanced and stopped a number of times to prime the noted section of the fluid path in Emig. For instance, instead of just the two possibilities noted by the Examiner, the priming operation of Emig could entail a first incremental advancement of the plunger 520 (associated with saline, for instance, up to the T-connector 420 in Figure 2C of Emig), followed by an advancement of the plunger 320 (associated with contrast, for instance up to the check valve 410 as referenced by the Examiner), followed by a second incremental advancement of the plunger 520 (associated with saline, for instance to add saline into the fluid path from the T-connector 420 up to and including the patient interface 200). Based upon Emig's silence on ordering of contrast/saline pushes and now at least these 3 possibilities for the priming operation addressed by Emig, one skilled in the art would not be motivated to modify the teachings of Emig in any manner that yields Appellant's invention of either claim 57 or claim 71.

Emig simply does not explicitly disclose that there are only two limited options for the "method of priming the contrast injection device and purging air" as suggested by the Examiner. As each of the Examiner's rationales for supporting an obviousness rejection of each of appealed independent claims 57 and 71 relies upon this premise (and that Appellant has sufficiently rebutted), claims 57 and 71 (as well as all claims depending therefrom) should be held to be allowable. Each of appealed independent claims 57 and 71 are directed to a very specific purging operation (the timing in which two different fluids are used, along with regions that are in fact purged by movement of these two different fluids).

Each of independent claims 57 and 71 set forth a very specific method that utilizes a purging operation. This purging operation entails first moving a plunger of a first syringe (contrast media) to purge a defined portion of Y-tubing extending from the first syringe, followed by moving a plunger of a second syringe (saline) to purge a defined portion of the Y-tubing extending from the second syringe. Emig does admittedly disclose using both saline and contrast in a priming operation. However, Emig does not address the specifics of its priming operation in relation to the contrast/saline sequence required by each of claims 57 and 71, much less in conjunction with the extent of the purge provided by each individual portion of the contrast/saline sequence. There is also no motivation or suggestion in the art for one of ordinary skill in the art to modify the disclosure of Emig in any manner that yields Appellant's invention of either claim 57 or claim 71. The general disclosure of Emig does not disclose or suggest the particularly defined methodology set forth in either of claims 57 or 71.

Conclusion

In view of the remarks presented by this Reply Brief and those set forth in the previously filed Appeal Brief, the pending claims are believed allowable and the case in condition for allowance. Appellant respectfully requests that the rejections of all pending claims be reversed.

Respectfully submitted,
MARSH FISCHMANN & BREYFOGLE LLP

By: 

James L. Johnson
Registration No. 34,195
8055 E. Tufts Avenue, Suite 450
Denver, CO 80237
Telephone: 720-562-5504
Facsimile: 303-770-015

Date: 8/5/11